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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/607,481	06/30/2000	Paul Warren Poole	24850A	2284

22889 7590 04/07/2003

OWENS CORNING
2790 COLUMBUS ROAD
GRANVILLE, OH 43023

EXAMINER

MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 04/07/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/607,481

Applicant(s)

POOLE ET AL.

Examiner

Michael C. Miggins

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-7 and 9-17.

Claim(s) withdrawn from consideration: none.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☒ Other: see attachment

ANSWERS TO APPLICANT'S ARGUMENTS

Applicant's arguments filed 3/17/03 have been carefully considered but are deemed unpersuasive. Applicant's summary of the instant invention and prosecution history detailed in paper #10, pages 1-3 is acknowledged.

Applicant has argued that the combination of Lynn et al. and Nelson is improper because there is no objective evidence of the suggestion to make the modification to the insulation board of Lynn et al. and arrive at applicant's claimed invention. Applicant argues further that it is mere recognition of the fact that, using the insert disclosed in the Nelson et al. patent results in an insulator having certain properties and there is no objective evidence of a suggestion that would lead one to the combination that the examiner proposes. The only evidence relied upon as establishing a suggestion to combine the teachings of the references is the mention in the Nelson patent of the desirability of providing an improved insulator with noise, vibration, and heat insulating properties. This objectively does not suggest the desirability of using an insert with the insulation board disclosed in the Lynn et al. patent.

Applicant's arguments are not persuasive because Nelson specifically describes that the insulation pad is specifically used to improve vibration dampening properties (see column 7, lines 58-68, column 8, lines 1-5 and lines 43-68, column 9, lines 12-17). Therefore one of ordinary skill in the art would have clear objective evidence of a suggestion to combine the teachings of Lynn et al. and Nelson et al. The motivation being to improve vibration dampening by using the insert, or pad, of Nelson et al. in the

insulating panel of Lynn et al. since Nelson et al. specifically describes that the insert or pad is used to improve vibration dampening.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Clearly, one of ordinary skill in the art does not need applicant's disclosure to know that the insulating insert, or pad, of Nelson et al. provides improved vibration dampening properties since Nelson et al. specifically state that said inert, or pad, is used for that express purpose as just discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is (703) 305-0915. The examiner can normally be reached on Monday-Friday; 1:30-10:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

MCM *del*
March 30, 2003

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772 *4/3/03*